



OFFICE OF THE CORPORATION COUNSEL

December 17, 2014

Honorable Barbara B. Crabb
Judge, U.S. District Court, Western District of Wisconsin
120 N. Henry St.
Madison, WI 53703

RE: *Wolf, et al. v. Walker, et al.*
Case No. 14-cv-64-BBC

Dear Judge Crabb:

I represent Dane County Clerk Scott McDonald in the above-entitled action. I am authorized by Milwaukee County Corporation Counsel Paul Bargren to state that Milwaukee County Clerk Joseph Czarnezki joins in this letter. The Plaintiffs in the above-entitled action have filed a Motion for award of attorneys fees, costs, and expenses pursuant to 42 U.S.C. §1988. It is the position of the Dane County and Milwaukee County Clerks that the county defendants should not be held liable for any fees, costs or expenses in this case.

Although the Plaintiff's Motion is not specific, it is my understanding that neither the Plaintiffs nor the State Defendants are seeking to hold the county Defendants jointly liable for fees, costs, and expenses. That position is consistent with Seventh Circuit precedent as set forth in *Herbst v. Ryan*, 90 F.3d 1300 (7th Cir. 1996). As in that case, the county clerks were not the "moving force" behind the constitutional wrong that formed the basis for this suit. *Id.*, at 1306. The county clerks were simply performing a ministerial act required by state statute, and in fact were subject to criminal sanctions had they issued marriage licenses to same sex couples. Therefore, it is the position of the Dane and Milwaukee County Clerks that they should be assessed no liability for statutory fees, costs and expenses in this case.

Thank you for your consideration of this matter.

Sincerely:

/s/

David R. Gault
Assistant Corporation Counsel

cc: All counsel of record via electronic filing

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